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### THE FEDERAL UNIFORM BILLS OF LADING ACT.

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The Pomerene Act passed August 29, 1916, prescribes the rights and duties of shippers and carriers arising from bills of lading issued for the transportation of goods in interstate commerce. By this enactment, Congress exercises its power of regulation over these instrumentalities of commerce and this statute becomes the law in all the states so far as interstate commerce is concerned.

Bills of lading are divided into two classes: (1) Straight Bills, wherein goods are consigned to a specified person,<sup>1</sup> and (2) Order Bills, wherein the goods are consigned to the order of any person.<sup>2</sup> The rights and duties of carriers and shippers vary with the kind of bill issued and the two classes must be considered separately. But there are some general provisions applying to both.

The principal purpose of the statute was to make order bills of lading negotiable. And the rights and duties arising from the issuance, transfer and possession of order bills are set out in detail.

The Report of the Senate Committee on Interstate Commerce, in 1914, declared the statute was designed to remedy defects in commercial law, which were said to be mainly as follows: (1) Shipper's load and count; (2) Duplicate bills of lading; (3) Altered bills of lading; (4) Spent bills of lading; (5) Forgeries; (6) Fraudulent bills of lading. These remedies may be considered first.

1. *Shipper's Load and Count.* A bill of lading at common law was strictly nothing more than a receipt for the goods accepted for transportation and a memorandum of the agreement between shipper and carrier. It was prima facie evidence of the truth of the statements contained, but none of its recitals were conclusive. But in so far as the quantity and quality of the goods were concerned, the carrier was estopped from denying the description in the bill of lading as against an innocent purchaser for value.<sup>3</sup>

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1. Sec. 2.

2. Sec. 3.

3. Cyc., VI, p. 416 and cases cited.

Hence there arose the custom on the part of the carrier of limiting its liability in this respect by inserting in the bill "Shipper's load and count," and similar phrases. When the bill contained this stipulation, the burden shifted to the shipper when the delivery was not in accord with the quantity and quality specified.<sup>4</sup>

Shippers complained that the limiting clause was sometimes inserted by carriers even when the loading had been done by the carriers' agents, and that the loading by carriers' agents at shippers' warehouses, yards, etc., had been refused. Inasmuch as with the growth of commerce, the bill of lading, while not negotiable, had acquired a degree of negotiability, and was transferred and treated as the representative of the goods it covered, the fluidity and welfare of commerce were obstructed by the inconclusive character of the description of the goods in bills of lading. And this was one of the evils the present statute was designed to remedy. Consequently by Sections 20 and 21 it is provided:

"Section 20. When goods are loaded by a carrier such carrier shall count the packages of goods, if package freight, and ascertain the kind and quantity if bulk freight, and such carrier shall not, in such cases, insert in the bill of lading or in any notice, receipt, contract, rule, regulation, or tariff, 'Shipper's weight, load, and count,' or other words of like purport, indicating that the goods were loaded by the shipper and the description of them made by him or in case of bulk freight and freight not concealed by packages the description made by him. If so inserted, contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein.

"Section 21. When package freight or bulk freight is loaded by a shipper and the goods are described in a bill of lading merely by a statement of marks or labels upon them or upon the packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill of lading that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents

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4. Porter, Bills of Lading, Sec. 60, Hutchinson, Carriers, third ed., Sec. 165. See also *In the matter of the Suspension of Western Classification* (1912), 25 I. C. C. R., 442, 491.

or condition of the contents of packages are unknown, or words of like purport are contained in the bill of lading, such statements, if true, shall not make liable the carrier issuing the bill of lading, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may also by inserting in the bill of lading the words 'Shipper's weight, load, and count,' or other words of like purport indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the non-receipt or by the misdescription of the goods described in the bill of lading: Provided, however, Where the shipper of bulk freight installs and maintains adequate facilities for weighing such freight, and the same are available to the carrier, then the carrier, upon written request of such shipper and when given a reasonable opportunity so to do, shall ascertain the kind and quantity of bulk freight within a reasonable time after such written request, and the carriers shall not in such cases insert in the bill of lading the words 'Shipper's weight,' or other words of like purport, and if so inserted contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein."

These sections of the statute do more than fix liabilities arising from the bill of lading. A right is created in the shipper to have his shipments described by the carrier, and the carrier must assume liability for the description so made.

2. *Duplicate Bills of Lading.* At common law the validity of a duplicate bill of lading depended upon the terms of the contract. In the absence of a stipulation concerning it, the duplicate had all the validity of the original.<sup>5</sup> Delivery by a carrier on a duplicate bill of lading in good faith was a legal delivery and no further liability existed.<sup>6</sup> By Section 5, a carrier is made

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5. *Missouri Pacific Ry. Co. v. Heidenheimer* (1891), 82 Tex. 195, 17 S. W. 608; *Michie, Carriers*, I, pp. 400-1 and cases cited; *Porter, Bills of Lading*, Sec. 495.

6. *Glyn, Mills, Currie & Co. v. East and West India Dock Co.* (1882), L. R. 7 App. Cas. 591; *Midland National Bank v. Missouri Pacific Ry. Co.* (1896), 132 Mo. 492, 33 S. W. 521, 53 Am. St. Rep. 505.

liable to a purchaser for value of a duplicate order bill unless the word "duplicate" is placed plainly upon the face of the bill. A bill marked "duplicate" imposes only the liability of an accurate copy.<sup>7</sup> This provision does not apply to shipments outside of the United States, nor to Alaska.

3. *Altered Bills of Lading.* An alteration of a written instrument which materially changes its purport and effect by the common law vitiates the instrument even in the possession of an innocent purchaser for value.<sup>8</sup> It is doubtful whether or not this rule should ever have applied to bills of lading; for its reason arose when the alteration occurred in an instrument which was itself a requisite to the right it evidenced. An alteration material in character may well vitiate the instrument itself, and when the writing is essential to the right it witnesses the right would follow the fate of the instrument. But a bill of lading was, in one sense, only a receipt for goods at common law, or a memorandum of an agreement enforceable without the production of the memorandum, and the application of this principle to bills of lading seems to have been of questionable logic.

Under the present statute, however, all doubt is removed, and the alteration is declared void and of no effect, and the original writing enforced. Section 13 provides:

"Section 13. Any alteration, addition, or erasure in a bill after its issue without authority from the carrier issuing the same, either in writing or noted on the bill, shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor."

4. *Spent Bills of Lading.* Delivery of goods was often made by carriers without surrender of bills of lading, or without any entry thereon, and a prolific source of fraud was the transfer and sale of bills of lading to innocent purchasers after the goods had been received. Custom had to some extent removed this evil and carriers as a rule enforced surrender of order bills of lading before delivery.

The liability of the carrier under these "spent" bills depended upon the terms of the bill of lading, and differed in different

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7. Sec. 15.

8. Cyc., II, pp. 177-79 and cases cited.

jurisdictions.<sup>9</sup> Sections 11 and 12 impose the absolute duty upon carriers of enforcing surrender of bills of lading by providing:

"Section 11. Except as provided in section twenty-six, and except when compelled by legal process, if a carrier delivers goods for which an order bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to anyone who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier and notwithstanding delivery was made to the person entitled thereto.

"Section 12. Except as provided in section twenty-six, and except when compelled by legal process, if a carrier delivers part of the goods for which an order bill had been issued and fails either—

(a) To take up and cancel the bill, or

(b) To place plainly upon it a statement that a portion of the goods has been delivered with a description which may be in general terms either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill to anyone who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto."

5. *Forgeries*. Section 41 of the Act defines forgeries of bills of lading, declares them misdemeanors, and prescribes a penalty.

6. *Fraudulent Bills of Lading*. In *Friedlander v. Texas and Pacific Railroad Company*,<sup>10</sup> the Supreme Court held:

"A bill of lading fraudulently issued by the station agent of a railroad company without receiving the goods named in it for transportation, but in other respects according to the customary course of business, imposes no liability upon the company to an innocent holder who receives it without knowledge or notice of the fraud and for a valuable consideration."

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9. Michie, Carriers, I, pp. 377, 519 and cases cited.

10. (1889) 130 U. S. 416, 32 L. Ed. 991, 9 S. C. R. 570.

This doctrine was followed by many states, although some held the carrier liable.<sup>11</sup>

Section 22 of the Act provides:

"Section 22. If a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the receiving of goods and issuing bills of lading therefor for transportation in commerce among the several states and with foreign nations, the carrier shall be liable to (a) the owner of goods covered by a straight bill subject to existing right of stoppage in transitu or (b) the holder of an order bill, who has given value in good faith, relying upon the description therein of the goods, for damages caused by the nonreceipt by the carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue."

*Delivery.* Under straight bills of lading delivery by the carrier must be made to consignee, if in possession of the bill, if transportation charges are paid, and receipt of goods is acknowledged, "in the absence of some lawful excuse." If the carrier refuse to deliver under the above conditions the burden of establishing the lawful excuse is upon the carrier.<sup>12</sup> The duty to deliver to consignee is, however, lifted from the carrier if it (1) "had been requested, by or on behalf of a person having a right of property or possession in the goods, not to make such delivery" or if it (2) "had information at the time of delivery that it was to a person not lawfully entitled to the possession of the goods";<sup>13</sup> and the carrier is made liable to the lawful owner if it delivers after notice or after having such information.

At common law the lawful owner of the goods was entitled to possession, but if the carrier delivered to the consignee in good faith, notice of a claim by a third person, whether ultimately proven to be the lawful owner or not, would not subject the carrier to liability. Under the present statute, delivery to a consignee would be at the carrier's peril, if it had received notice of a claim from a person who might be the lawful owner. This statute, therefore, puts the burden upon the carrier of determin-

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11. Michie, Carriers, I, pp. 308, 310, 311 and cases cited.

12. Sec. 8.

13. Sec. 10.

ing who was the lawful owner and making this decision with liability for mistake. But by Sections 17 and 18 it is provided:

"Section 17. If more than one person claim the title or possession of goods, the carrier may require all known claimants to interplead, either as defense to an action brought against him for non-delivery of the goods or as an original suit, whichever is appropriate.

"Section 18. If some one other than the consignee or the person in possession of the bill has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods, either to the consignee or person in possession of the bill or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead."

The carrier, therefore, may escape liability for refusal to deliver by requiring claimants to interplead, or it may make delivery to the lawful owner, subject to liability if its determination, as to who is the lawful owner, is erroneous.

The effect of these provisions may be summed up as follows:

1. Delivery must be made to consignee if in possession of the bill, in the absence of notice or information as to another lawful claimant, upon payment of freight charges and acknowledgement of receipt of goods.

2. When notice is given or information is had of another claimant, the carrier must deliver to the lawful owner, and unless it require an interpleader, it determines the lawful owner at its peril.

These provisions concerning delivery apply equally to holders of order bills with the added condition that the holder must surrender the order bill properly endorsed to be entitled to possession. The surrender of the order bill is an absolute requirement to relieve the carrier from liability.

These duties as to delivery affect the hitherto existing rights of reconsignment and diversion, and in the case of order bills the right of stoppage in transitu. The right of stoppage in transitu is preserved in consignors, as it existed at common law, in straight



bills.<sup>14</sup> It is entirely destroyed in order bills. This is, of course, a necessary corollary to making order bills negotiable instruments. And any right of division or reconsignment which may have existed at common law in either consignor or consignee under order bills is destroyed. Because the holder of the order bill is entitled to possession and any diversion or reconsignment without surrender of the order bill would be at the carrier's peril.

At common law the rights of diversion and reconsignment depended on the ownership of the goods.<sup>15</sup> The bill of lading was not conclusive evidence of ownership, but in the absence of other evidence, certain presumptions arose. Under a straight bill of lading, the consignor was presumed the owner during transit and might divert and reassign.

Under the new statute this presumption does not arise. The consignor must be a claimant, or the carrier prove the consignor the lawful owner, to excuse its failure to deliver to a consignee. The rights of diversion and reconsignment are still under the new statute dependent upon ownership, but the presumptions formerly arising from straight bills of lading no longer arise.

The following cases illustrate the rules in different jurisdictions as to the presumptions arising upon the rights of diversion and reconsignment. Under a straight bill of lading, naming a consignee, the consignor may divert and reassign.<sup>16</sup> When the bill of lading has been forwarded by consignor to consignee, the consignor cannot alter destination.<sup>17</sup> When the consignor is the agent of the consignee, and this is known to carrier, consignor cannot divert or reassign.<sup>18</sup> A consignee under a straight bill

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14. Sec. 22.

15. Hutchinson, Carriers, third ed., Sec. 611, 660, 735; Michie, Carriers, I, p. 482; *Southern Express Co. v. Dickson* (1876), 94 U. S. 549, 24 L. Ed. 285.

16. *Strahorn v. Union Stock Yard & Transit Co.* (1867), 43 Ill. 424, 92 Am. Dec. 142; *Sutherland v. Second National Bank* (1880), 78 Ky. 250, 6 Am. & Eng. R. R. Cas. 368; *Fort Worth, etc., R. Co. Caruthers* (Tex. Civ. App. 1913), 157 S. W. 238.

17. Michie, Carriers, I, p. 482, citing *Hartwell v. Louisville, etc., Ry. Co.*, 15 Ky. L. Rep. 778.

18. *Thompson v. Fargo* (1872), 49 N. Y. 188, 10 Am. Rep. 342, cited and approved in *Southern Express Co. v. Dickson* (1876), 94 U. S. 551, 24 L. Ed. 285.

of lading cannot divert or reconsign, if it be known to carrier he was agent of consignor.<sup>19</sup> A consignee under a straight bill of lading cannot divert or reconsign without producing the bill of lading.<sup>20</sup> A bill of lading consigned to shipper, "notify" vendee, endorsed by shipper to a bank for collection, still leaves the shipper the presumptive owner, and entitled to route, divert, and reconsign. Diversion by consignee without having bill of lading is unlawful.<sup>21</sup>

In all cases the rights of diversion and reconsignment rest in the true owner, but their exercise becomes subject to the provisions of the statute.

The carrier cannot assert a right or title to the goods in itself to excuse its failure to deliver, unless the right or title is derived from a transfer made by the consignor or consignee after shipment, or from the carrier's lien.<sup>22</sup> While the carrier could not become a claimant as a matter of defense, it might become a claimant in an independent action.

The carrier cannot assert a right or title to the goods in a third person to excuse its failure to deliver, except as provided in Sections 9, 17 and 18, unless enforced by legal process.<sup>23</sup> The exception would seem to nullify the first clause of the section; but its intent is evidently that a carrier cannot assert claims of third persons to excuse failure to deliver, unless asserted in good faith for the benefit of third persons. It is supposable that third persons who are the true lawful owners and so known to a carrier, might desire delivery to a consignee, and, in such

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19. *Southern Express Co. v. Dickson*, supra.

20. *Ryan v. Great Northern Ry. Co.* (1903), 90 Minn. 12, 95 N. W. 758.

21. *Perkett v. Manistee, etc., R. Co.* (1913), 175 Mich. 253, 141 N. W. 607.

"By using bills of lading for the cotton, stipulating for a delivery to order, the ship became bound to deliver it to no one who had not the order of the shipper." *The Thames* (1871), 14 Wall. 98, 107, 20 L. Ed. 804.

Ship bills of lading are the same in the eyes of the law as carrier bills of lading. *Robinson v. Memphis, etc., R. Co.* (1881), 9 Fed. 129.

22. Sec. 16.

23. Sec. 19.

an event, this information in the carrier could not be used as a cloak to cover its refusal or failure to deliver.<sup>24</sup>

A straight bill cannot be negotiated free from existing equities.<sup>25</sup> The transferee of a straight bill acquires as against the transferor title to the goods, subject to any agreement with transferor. The transferee acquires the obligations the carrier owed the transferor immediately prior to notice to the carrier of the transfer. Prior to notification to carrier of the transfer of a straight bill, the transferee's rights may be defeated by garnishment, attachment, or execution by a creditor of the transferor, or by a notification to the carrier of another sale or transfer by the transferor. Notification to the carrier must be to a proper officer or agent, and within a reasonable time.<sup>26</sup> This section is an elaboration of the non-negotiable character of a straight bill.

To consummate a sale of a straight bill, the carrier must be notified. Such notification is the end of a process of taking title out of the seller and fixing it in the buyer. When the process is completed, the seller's acts, his debts, and creditors can no longer affect the property purchased; but until notification to the carrier, the transferee of a straight bill is holding it at his peril, subject to the various rights creditors of the transferor may have against the transferor, and subject also to the transferor's acts.

This is a radical change in the common law rights of parties which had previously existed. At common law, while the bill of lading was not negotiable, title to the goods it represented might pass by ordinary contract of sale and no notification to the carrier was necessary.

It is possible that the language of this section goes further than the intent of Congress. Failure to deliver on the part of a carrier might well be excused by garnishment, execution or subsequent sale, when the carrier had not been notified of the first sale and transfer of the bill. But the statute here declares the title of the transferee of the goods may be defeated. The relative rights of parties to the transfer have been changed. No-

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<sup>24</sup> Sec. 22.

<sup>25</sup> Sec. 29.

<sup>26</sup> Sec. 32.

tification to the carrier has been made an essential element in the sale of the goods.

It may be noted, however, that at common law, to complete a sale of personalty in the possession of a bailee, notice to the bailee was necessary to defeat the right of a creditor to attach the goods. There had to be notice to change the possession in the bailee for the seller, to a constructive possession for the purchaser.<sup>27</sup> But this rule did not apply to bills of lading. Though non-negotiable they acquired by custom a quasi-negotiability, so that transfer of the instrument was equivalent to a transfer of the goods.<sup>28</sup>

*Order Bills.* The various sections in the statute with reference to the negotiability of order bills are self-explanatory and need no comment; but the liabilities of an indorser are different from an indorser of an ordinary negotiable instrument. There is no element of suretyship in the indorsement of a bill of lading. The indorsement is mainly for the purpose of transfer and to permit the exchange and marketing of the instrument. Section 31 provides:

"Section 31. A person to whom an order bill has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value; and

(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him."

And an indorser of an order bill by implication makes certain warranties by Section 34, which reads as follows:

"Section 34. A person who negotiates or transfers for value a bill by indorsement or delivery, unless a contrary intention appears, warrants—

(a) That the bill is genuine;

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27. *Buhl Iron Works v. Teuton* (1888), 67 Mich. 623, 35 N. W. 804.

28. Cyc., VI, pp. 426-27 and cases cited.

- (b) That he has a legal right to transfer it;
- (c) That he has knowledge of no fact which would impair the validity or worth of the bill;
- (d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied if the contract of the parties had been to transfer without a bill the goods represented thereby."

But the element of suretyship is eliminated from the indorsement by Section 35.

"Section 35. The indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorser of the bill to fulfill their respective obligations."

HENRY HULL.

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